

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL ASSOCIATION
OF CHAIN DRUG STORES,

and

NATIONAL COMMUNITY
PHARMACISTS ASSOCIATION

Plaintiffs,

v.

THE HONORABLE
TOMMY G. THOMSON,

and

THOMAS A. SCULLY

Defendants.

AMERICAN PHARMACEUTICAL
ASSOCIATION

Applicant-Intervenor

Civil Action No. 01-1554 (PLF)

ORDER

Defendants have filed a motion for further clarification regarding the stay of proceedings in this case, to which plaintiffs have responded. Defendants object to certain language in the Court's Order of November 8, 2001, specifically the following statement:

Finally, the Court noted in its November 5 order that the stay of proceedings will continue only 'while [HHS] submits its proposed policy for notice and comment.' See Order of November 5, 2001, at 2. Plaintiffs are free to return to court at any time after such a proposal is issued.

Although the Court drew much of this language directly from defendants' proposed order, see Defendants' Motion for Stay of Proceedings, October 9, 2001, defendants now object that

the last sentence of this paragraph “seems to suggest that the Court will review HHS’s policy at the time its proposal is issued, without the benefit of public comments or the issuance of a final policy.” Defendants’ Motion at 2. Because the Court did not intend to make any statement as to the precise time at which defendants’ revised policy will become reviewable in this Court, it is hereby

ORDERED that defendants’ motion for further clarification [28] is GRANTED in part and DENIED in part; it is

FURTHER ORDERED the Court’s previous orders regarding the stay of proceedings in this case remain unchanged and in full effect. See Orders, November 5 and November 8, 2001; and it is

FURTHER ORDERED that the stay will continue until such time as defendants’ policy is ripe for review. As plaintiffs state in their response to defendants’ motion, “[t]he appropriate time to decide whether judicial review of agency action is appropriate is when plaintiffs seek such review, which has not occurred yet.” Plaintiff’s response at 2. The Court therefore sees no reason to clarify further its stay of proceedings in this case.

SO ORDERED.

PAUL L. FRIEDMAN
United States District Judge

DATE: